

STATE OF MICHIGAN
COURT OF APPEALS

LINDA CROUCH, Conservator of the Estate of
CHAD CROUCH,

UNPUBLISHED
May 22, 2003

Plaintiff-Appellant,

v

REGIONAL EMERGENCY MEDICAL
SERVICES, d/b/a REGIONAL EMS, and
JEFFREY STEVENS,

No. 238010
Genesee Circuit Court
LC No. 99-064580-NI

Defendants,

and

MATTHEW GALLAGHER,

Defendant-Appellee.

Before: Talbot, P.J., and White and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right a circuit court order granting defendant Gallagher's ("defendant") motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). We affirm. We are deciding this case without oral argument pursuant to MCR 7.214(E).

Viewed in the light most favorable to plaintiff, the evidence indicates that defendant, a sheriff's deputy, was dispatched to the Crouch home following a phone call to 911 by plaintiff concerning her husband, Chad Crouch (hereinafter "Crouch"). Following defendant's arrival, plaintiff and a family friend expressed their concerns about Crouch's irrational behavior and his statements suggesting that he was contemplating suicide. Plaintiff wanted him transported to Hurley Hospital. Defendant talked to Crouch, and he calmed down and cooperated with defendant. Defendant handcuffed Crouch and escorted him from the house to the back of the patrol car. Defendant arranged for an ambulance to transport Crouch to the hospital because he was being "totally cooperative." When the ambulance arrived, defendant informed the attendants that Crouch had a history of depression, was talking about suicide, and had been

drinking, but was being cooperative. One of the attendants, a licensed paramedic, and defendant helped Crouch into the back of the ambulance. Defendant removed the handcuffs.¹ Crouch was quiet and cooperative and agreed to be transported for evaluation. On the way to the hospital, Crouch opened the door, stepped on the bumper and then fell or stepped off of the moving ambulance, sustaining injuries.

Plaintiff brought this action against defendant and alleged that his conduct fell under the “gross negligence” exception to governmental immunity. MCL 691.1407(2)(c). Plaintiff alleged that defendant was grossly negligent because he released Crouch from protective custody to the ambulance attendants rather than transporting him to the hospital in the patrol vehicle.

Plaintiff presented testimony from two experts in support of her position. Norman Jones testified, “Anytime a law enforcement officer takes a person into custody, whether it be criminal, civil protective custody, you are absolutely totally responsible for that individual’s welfare, and others, and make sure that they are transported, taken to a place of safe confinement.” According to Jones, the duty to maintain protective custody ends when the officer turns the individual over “to those having authority to treat this person, those having – that will take full responsibility and have the authority to take that responsibility” Jones stated that he would not have turned Crouch over to the ambulance attendants, and in his opinion, defendant’s actions were so reckless as to demonstrate a substantial lack of concern for whether harm would come to Crouch. According to Jones, any “prudent police officer” would have transported Crouch to the hospital in the patrol car. Plaintiff’s second expert, Gregory Teter, similarly opined that defendant’s actions in releasing Crouch from protective custody were so reckless as to demonstrate a substantial lack of concern for whether harm would come to Crouch.

The trial court ruled that when the evidence was viewed in the light most favorable to plaintiff, the best one could say was that defendant made a wrong choice. However, the court reasoned that “turning Mr. Crouch over to an experienced EMT professional does not rise to the level of what this Court would determine to be reckless to the point of demonstrating a lack of concern for Mr. Crouch’s welfare.” In addition, the court ruled that plaintiff’s proof of proximate causation was deficient because the incident occurred after Crouch was in the care of the paramedic.

Plaintiff argues that the court erred in granting summary disposition because reasonable minds could differ concerning whether defendant’s conduct was grossly negligent, as defined in MCL 691.1407(2)(c). We disagree.

The governmental immunity statute defines “gross negligence” as “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” MCL 691.1407(2)(c). Evidence of ordinary negligence does not create a question of fact regarding gross negligence. *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999). As the Michigan Supreme Court emphasized in that case, “[T]he Legislature limited employee liability to situations where the contested conduct was substantially more than negligent.” *Id.*, p 122.

¹ The record is unclear whether defendant removed the handcuffs before or after Crouch entered the ambulance.

Although plaintiff's experts indicated that they believed defendant's actions were grossly negligent as defined in MCL 691.1407(2)(c), their opinions that defendant violated the statutory standard do not create a question of fact. *Id.*, p 130 n 11.

We agree with the trial court that defendant was entitled to summary disposition pursuant to MCR 2.116(C)(7). Reasonable minds could not differ in concluding that defendant's conduct in turning Crouch over to the care of the ambulance attendants was not "gross negligence" as defined in the statute. Defendant released Crouch to the care of a paramedic for transportation to the hospital in an ambulance. This conduct did not demonstrate "a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c).

Plaintiff argues that the trial court erred in determining the weight and credibility of plaintiff's expert witness Jones concerning the standard of care. The trial court did not improperly evaluate Jones' testimony. Rather, we understand the court's statements as indicating the court's recognition that Jones' opinion was not determinative on the issue whether the statutory standard of care had been violated. *Maiden, supra*, p 130 n 11.

Plaintiff also contends that the trial court erred in holding that defendant's action were not the proximate cause of Crouch's injury. According to plaintiff, Crouch's injury while being transported was foreseeable, and therefore, turning Crouch over to the ambulance attendants did not break the chain of causation. We disagree.

Under the gross negligence exception, a governmental employee may be held liable if his gross negligence is "the proximate cause" of the plaintiff's injury. MCL 691.1407(2)(c). In *Robinson v Detroit*, 462 Mich 439, 459, 462; 613 NW2d 307 (2000), the Court explained that "the proximate cause" means that the employee's gross negligence must be "the one most immediate, efficient, and direct cause" of the injury or damage. We agree with the trial court that reasonable minds could not differ in concluding that defendant's actions do not meet this standard, in light of defendant's having given Crouch over to the paramedics' care and control. Compare, *Kruger v White Lake Twp*, 250 Mich App 622, 626-627; 648 NW2d 660 (2002). Accordingly, defendant was entitled to summary disposition pursuant to MCR 2.116(C)(7) on this basis as well.

Affirmed.

/s/ Michael J. Talbot
/s/ Helene N. White
/s/ Christopher M. Murray